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WASHINGTON 25, D.C.

April 29, 1957

Mr. Roger W. Jones
Assistant Director
Legislative Reference
Bureau of the Budget
Executive Office of the President
Washington 25, D. C.

Dear Mr. Jones:

This is in reply to the request of April 25, 1957, for the views of the Commission on the drafts of two executive orders entitled "Security Requirements Relating to Civilian Employment in Sensitive Positions in the Government" (referred to hereinafter as the sensitive order) and "Investigative Requirements Relating to Civilian Employment in Non-Sensitive Positions in the Government" (referred to hereinafter as the non-sensitive order).

The Commission is in complete agreement with the aims and purposes of these orders and approves of them in their present form except for the provisions referred to hereinafter in regard to which submissions are offered in the interest of clarifying the orders.

Subsection 6(a) of the sensitive order contains a proviso permitting the omission of written inquiries to law enforcement agencies, former employers, and others "in the case of any person who has completed a minimum of 5 years of continuous civilian service with the Government (except for breaks in service not in excess of 90 days) * * * ." An almost identically worded provision appears in the non-sensitive order as subsection 1(b). Undoubtedly the purpose of these provisions is to avoid the unnecessary action and expense of further inquiries in the cases of Federal employees whose records are clear. However, the wording used appears to permit the use of the provisions in a situation for which it is not believed they were intended.

The parenthetical material concerning the breaks in service appears to refer solely to the term "continuous civilian service" and there is nothing in either subsection 6(a) or subsection 1(b) that relates the 5 years of continuous service to the person's present employment. In other words, under the provisions as they are now written, a person could have completed the minimum of 5 years of continuous service between 1930 and 1936 and have had no Government employment in more than 20 years since 1936 and the provisions would permit dispensing with the written inquiries in connection with his employment.

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A revision of the language in subsection 6(a) and subsection 1(b) will prevent any improper application of those provisions. The following language is suggested for use in this regard:

" * * * written inquiries may be dispensed with in the case of any person presently in Government service who has completed a minimum of 5 years of current continuous civilian service (except for breaks in service not in excess of 90 days) * * * ."

Subsection 6(d) of the sensitive order provides that a new investigation of the occupant of a sensitive position is not required "if such occupant has been the subject of an investigation conforming to the minimum requirements specified in this section." Subsection 1(c) of the non-sensitive order contains an almost identical provision. The purpose of these subsections is no doubt to avoid unnecessary and duplicative investigations. However, it is believed that the language used might permit a situation to arise that would be repugnant to the character of the orders.

Neither subsection 6(d) nor subsection 1(c) indicate that the previous investigation of the occupant must have been completed or have resulted in favorable adjudicative action. Under these subsections as they now read, the position occupant could have been the subject of an investigation that conformed to the requirements and, therefore, a new investigation would not be required even though the previous investigation was incomplete or resulted in unfavorable adjudicative action. For example, an employee in a sensitive position could have been the subject of a previous investigation, the result of which occasioned his removal to a non-sensitive position. Nevertheless, as subsection 6(d) now reads, a new investigation of that employee would not be required if his position is found to be a sensitive one under the proposed sensitive order.

To avoid any unfavorable situations under subsection 6(d) or subsection 1(c) the following change in language is suggested:

"Nothing in this section shall be construed as requiring a new investigation with respect to an occupant of a sensitive position if such occupant has been the subject of favorable adjudicative action after the completion of an investigation conforming to the minimum requirements specified in this section."

Section 7 of the sensitive order contains 15 subsections that refer to the types of information toward which the investigation under the order must be directed. Section 3 of the non-sensitive order contains 11 subsections that set forth the types of information that require prompt referral of the investigative report to the Federal Bureau of Investigation. In subsection 7(b) of the sensitive order and in

subsection 3(b) of the non-sensitive order references are made to the "continuing" association with saboteurs, spies, and others. In subsections 7(d) and 7(e) of the sensitive order and in subsections 3(d) and 3(e) of the non-sensitive order references are made to the "continuous" association with subversive organizations and members of such organizations. As there are differences between the definitions of "continuing" and "continuous" it is believed that clarification is in order on the use of these words.

The use of the word "continuing" in these subsections would appear to require evidence that the association has persisted, kept on, or endured up to and into the present time. On the other hand, the use of the word "continuous" would seem to require evidence that the association, while it existed, was without break or interruption. The word "continuous" would not appear to require that the association has persisted or that it exists at the present time. The Commission is of the opinion that there is little need for a requirement of "continuing" association. If an association of the type referred to existed at any time, the interests of national security will be served by investigating such association. The word "continuous," however, does appear to have some value in that it denotes a standard that excludes incidental or casual association. In any event, regardless of which of the two words is preferred, the Commission suggests that in the interests of clarity and uniform administration, the adjective should be the same for each reference to the word "association."

Section 8(a) of the sensitive order makes reference to the establishment and maintenance of an "investigations index" covering all persons investigated "under this order." Executive Order 10450, which the sensitive order supersedes, provided for a "security-investigations index" and, in addition, provided that the "central index" established and maintained under Executive Order No. 9835 would be made part of the "security-investigations index." In order that there be no question concerning the nature and the scope of the "investigations index" established by section 8(a), it is suggested that a provision be included making the "security-investigations index" a part thereof.

In conclusion it is noted that in the draft of the Attorney General's letter to the President that accompanied the orders, it is stated that the non-sensitive order does not provide for the removal of non-sensitive employees, and that such removals would be accomplished under existing laws and procedures. It is the view of the Commission that this is an important matter and one that will be the subject of considerable discussion. For this reason it is suggested that the substance of this statement be incorporated into the non-sensitive order. In this respect, the following language is suggested as a final sentence to section 4 of the non-sensitive order:

" * * * Removals or other personnel actions resulting from determinations or adjudications based in whole or in part upon the investigations processed under the provisions of this order shall be accomplished under applicable existing laws and procedures."

By direction of the Commission:

Sincerely yours,

(signed)

Harris Ellsworth

Harris Ellsworth
Chairman